

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOANNA LANG, individually and as
personal representative of the Estate of
Dick Lang, and as Guardian and Parent of
the Minor Children R.L. and C.L

Plaintiff,

v.

CHERYL STRANGE, individually and as
Secretary of the Washington State
Department of Social and Human Services
(DSHS), *et al.*,

Defendants.

CASE NO. 3:21-cv-05286

ORDER GRANTING CLARK
COUNTY'S MOTION TO DISMISS

This matter comes before the Court on Defendant Clark County's Motion to Dismiss (Dkt. 72). The Court has considered the motion, to which Plaintiff has not responded, and the remaining file. For the reasons set forth in this order, Clark County's Motion to Dismiss should be granted, and Clark County should be dismissed as a defendant in this matter.

1 **I. FACTS AND PROCEDURAL HISTORY**

2 **A. FACTS**

3 Plaintiff brings this lawsuit against at least thirty defendants alleging violations of law
4 related to the temporary removal of two of Plaintiff's adopted children from her custody after
5 allegations of child abuse. A full recitation of the facts can be found in the Court's previous
6 orders granting motions to dismiss brought by other defendants (Dkts. 40 and 41), and Plaintiff's
7 amended complaint (Dkt. 14). The only allegation against Defendant Clark County in Plaintiff's
8 amended complaint is that "Defendants were in their collective capacity and as individuals, acted
9 with authority granted to them by DSHS, Clark County, City of Vancouver, Cowlitz County,
10 City of Kelso, Legacy Salmon Creek Hospital, and CASA." Dkt. 14 at 9. Plaintiff does not
11 identify which defendants allegedly acted under authority granted to them by Clark County. *See*
12 Dkt. 14.

13 **B. PROCEDURAL HISTORY**

14 This matter was removed from Clark County Superior Court on April 21, 2021. Plaintiff
15 names Clark County as a defendant in the amended complaint (Dkt. 14), but according to Clark
16 County it was never properly served. Dkt. 72. Plaintiff previously filed a motion to join Clark
17 County as a necessary party (Dkt. 68) but withdrew that motion (*see* Dkt. 71).

18 The Court previously granted motions to dismiss or for summary judgment filed by other
19 defendants in this matter (Dkts. 40 and 41). Clark County filed the pending motion to dismiss on
20 December 8, 2021, and it was originally noted for consideration on January 7, 2021. The Court
21 learned by phone call that Plaintiff's counsel, Kevin L. Johnson, had his license to practice law
22 suspended by the Washington State Bar Association. Plaintiff did not respond to the motion to
23 dismiss by the noting date, and Mr. Johnson was still listed as the designated recipient for filings
24

1 on CM/ECF. On January 19, 2021, the Court issued orders to update the contact information in
2 CM/ECF to reflect Plaintiff's *pro se* status (Dkt. 74) and renote the motion to dismiss to ensure
3 Plaintiff had adequate notice and opportunity to respond (Dkt. 75). The pending motion is now
4 ripe for consideration, though Plaintiff has still not filed a response.

5 **II. DISCUSSION**

6 Clark County moves to dismiss on the grounds that Plaintiff failed to properly execute
7 service, failed to properly file a tort claim, failed to state a damage claim against Clark County,
8 failed to allege cognizable causes of action under 42 U.S.C. § 1983, failed to state a valid RICO
9 claim, and because Plaintiff's claims are barred by the statute of limitations. Dkt. 72.

10 **A. STANDARD FOR MOTION TO DISMISS**

11 Fed. R. Civ. P. 12(b) motions to dismiss may be based on either the lack of a cognizable
12 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri*
13 *v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as
14 admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d
15 1295 (9th Cir. 1983). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does
16 not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his
17 entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the
18 elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-55
19 (2007) (internal citations omitted). "Factual allegations must be enough to raise a right to relief
20 above the speculative level, on the assumption that all the allegations in the complaint are true
21 (even if doubtful in fact)." *Id.* at 555. The complaint must allege "enough facts to state a claim
22 to relief that is plausible on its face." *Id.* at 547.

B. FAILURE TO FILE A RESPONSE IN OPPOSITION

Pursuant to Local Civil Rule 7(b)(2), “except for motions for summary judgment, if a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit.”

C. ANALYSIS

Plaintiff does not plausibly establish entitlement to relief, and the Court construes her failure to respond as an admission that Clark County’s motion has merit. LCR 7(b)(2). Plaintiff does not appear to have properly filed a damage claim with Clark County before filing the instant lawsuit, which is “a condition precedent to the commencement of any action claiming damages” against a local governmental entity. RCW 4.96.010(1). Furthermore, Plaintiff is now appearing *pro se*. The claims she brings in her personal capacity are barred by the relevant statutes of limitations. *See* Dkts. 40 and 41. Therefore, dismissal of her claims should be with prejudice.

Dismissal of all other claims is also appropriate because a plaintiff appearing *pro se* may not bring claims on behalf of another person. *See Johns v. Cnty of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997). Furthermore, Plaintiff has not met burden of establishing that Clark County was properly served the summons with the complaint. *See Behagen v. Amateur Basketball Ass’n of the United States*, 744 F.2d 731, 733 (10th Cir. 1984). Finally, the amended complaint does not plausibly state a claim for relief against Clark County. The single allegation that “Defendants were in their collective capacity and as individuals, acted with authority granted to them by DSHS, Clark County, City of Vancouver, Cowlitz County, City of Kelso, Legacy Salmon Creek Hospital, and CASA” (Dkt. 14 at 9) does not provide sufficient factual detail to meet the pleading standard required by Federal Rule of Civil Procedure 12(b)(6).

Therefore, Clark County’s motion to dismiss should be granted.

Therefore, it is hereby **ORDERED** that:

- The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 28th day of February, 2022.

Robert Bryan

ROBERT J. BRYAN
United States District Judge